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71-1486

FILED
MAY 13 1972
MICHAEL RODAK, JR., C

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. _____

GEORGE M. HART, dba SAN DIEGO CABINETS; ALLAN M. HOMES and CHARLES A. HOMES dba HOMES PRE-HUNG DOORS, and HOMES and SONS; THOMPSON CABINETS, INC.; CROSS CABINET & DOOR COMPANY; RONALD H. SANDOVAL dba RONDELL CABINET MFG.; HARRY B. PARKINSON dba PARKINSON CABINET SHOP and KITCHEN CABINETS, INC.,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDY S. FELDMAN

1933 South Broadway
Los Angeles, Ca. 90007
(213) RI 8-6337

Attorney for Petitioners

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Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on February 14, 1972.

OPINION BELOW

The opinion of the Court of Appeals for the Ninth Circuit appears at 453 F.2d 215.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on November 24, 1971. A timely petition for rehearing was denied January 7, 1972, and this Petition for a Writ of Certiorari was filed within 90 days after the filing and entering of judgment on February 14, 1972. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether there should be required that before a union is bound to a multi-union, multi-employee collective bargaining arrangement there must be a "practice" of such collective bargaining even though there is already consent to such arrangement.

STATUTORY PROVISIONS INVOLVED

National Labor Relations Act, as amended, §8(a) (1, 5), 29 U.S.C. §158(a)(1, 5).

STATEMENT OF THE CASE

Petitioners are the individual employers of workmen (mainly carpenters), who have refused, as employers, to bargain with Carpenters Local Union No. 2020, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (herein "Local 2020") as separate units at each petitioner's premises. (Cf. 183 NLRB No. 100).

The Southern California Association of Cabinet Manufacturers (herein "SCACM") is a trade association whose membership consists of small employers who manufacture kitchen and bathroom cabinets in the twelve Southern California counties, including San Diego County. SCACM bargains collectively for its members. Beginning in 1965, SCACM became party signatory to an agreement with the twelve Southern California Counties Mill Conference (herein "Southern California Conference"), the latter acting for and on behalf of certain local unions and district councils, including Carpenters Local Union No. 2020, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (herein "Local 2020"). Contractual relationships between SCACM and the Southern California

Conference embraced the time of the instant dispute since SCACM and the Conference had agreed to and signed a "1968-1971 Master Labor Agreement, 12 Southern California Counties Residential Cabinet, School and Full Mill and Laminate Fabricating and Manufacturing Industries between Southern California Association of Cabinet Manufacturers and United Brotherhood of Carpenters and Joiners of America, AFL-CIO."

Local 2020 is a signatory to this agreement and has never effectively withdrawn from it.

The purposes of this multi-employer, multi-union agreement are set out at page 1 of the above agreement:

> "The parties to this contract agree to cooperate in every reasonable way to insure performance of the obligations under this Agreement, to insure maximum flexibility of operations, movement of men, and expeditious completion of work."

The broad coverage of the agreement is set out, also at page 1:

"The employer recognizes the unions signatory hereto collectively as the sole and exclusive bargaining agency for all employees performing work in the 12 Southern California Counties . . . in the classifications listed in Exhibit 'A'."
(Emphasis added)

Contemplating that new employer members might have existing labor agreements, an accommodation to this eventuality is provided in §12(a), page 3:

"All employers who are or who become members of the Southern California Association of Cabinet Manufacturers are parties to this Agreement and are entitled to the benefits and subject to the obligations hereof; except that, where a Labor Agreement was previously in existence covering such employer any grievance or dispute existing as of the date of affiliation with the Southern California Association of Cabinet Manufacturers or prior thereto

shall be processed, under the terms of the employer's prior agreement." (Emphasis added.)

Section 19(d) at page 6 provides in the same vein:

> "It is hereby agreed that no employee shall receive a reduction in wages due to the signing of this Agreement."

Now, back in 1966 this same Local 2020 and the San Diego Lumbermen's Association negotiated a labor contract, expiring July 31, 1969. The nine petitioners herein were not members of that Association, but seven of the nine, with another 40 "independent employers' in the San Diego area, negotiated separate and individual contracts containing essentially the same terms with the Local 2020 for the same period of time. Two petitioning employers (Randell and C.A. Homes) did not sign contracts. However, they complied with the terms and conditions of the 1966-69 Association contract.

On May 29, 1969 the Union served the San Diego Lumbermen's Association and each of the independent employers, including all

petitioners, with a 60-day notice of "our desire to change, modify or terminate" the contract. The Union declared that it stood ready, during June, 1969 to negotiate with employers, and added:

> "If we have no response to this notice, we will assume it is your intention to abide by the outcome of negotiations between our Union and the Lumbermen's Association.
>
> Thank you for an early response."

The San Diego Lumbermen's Association and Local 2020 agreed on a settlement approved by Union vote on July 30,1969. Later on that day, the Union notified all independents that it proposed to continue bargaining on "an individual employer basis", and suggested an August 2nd meeting.

Meanwhile, between July 26 and July 30, 1969, D & G (an individual employer not joined as a respondent before the National Labor Relations Board), and the seven petitioners, applied for membership in the Southern California Association of Cabinet Manufacturers (SCACM).

Notice of their membership in SCACM was sent by it to the Southern California Conference and a copy to Local 2020.

One petitioner (Cross), then wired Local 2020 that it was a member of "S.C. Association", and that the "S.C. Association" was the sole bargaining agent for its members, hence Cross could not meet with Local 2020 to negotiate on August 2, 1969.

On August 2, 1969, some independents met with Local 2020, but no petitioners. Those present signed an Interim Agreement with Local 2020. Before the meeting concluded C.A. Homes and Kent Cross appeared and Homes signed an Interim Agreement with Local 2020 for himself, and offered, as agent for the San Diego Lumbermen's Association, to sign "under protest" an Interim Agreement as an agent for the Association, and on behalf of all other petitioners. Local 2020 refused to accept any contract or permit any execution unless such act bound every petitioner as a separate, independent employer. This was not agreeable to Homes, who refused so to sign.

On August 4, 1969, Local 2020 struck

all independents who had not signed a separate Interim Agreement. Each petitioner then signed an Interim Agreement under protest.

The National Labor Relations Board, on the above facts, found that the petitioners had not been relieved of their obligations under §8(a)(5) and (1) of the National Labor Relations Act to bargain with Local 2020 by their affiliation with the Southern California Association of Cabinet Manufacturers, and ordered them to meet and bargain upon request of the Union.

The Court of Appeals granted the petition to enforce the order of the Board because, as it said in the final part of its opinion:

> "The Board suggests the above cases are controlling here. We agree. We are advised of no facts which make the Board's finding that Local 2020 had neither practiced nor consented to multi-employer bargaining alone, clearly erroneous." (Emphasis by the Court of Appeal.) 453 F.2d 215, 218.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEAL AS TO THE BINDING EFFECT OF THE ARRANGEMENT UPON A UNION WHICH HAS BEEN PARTY TO A MULTI-UNION, MULTI-EMPLOYER COLLECTIVE BARGAINING AGREEMENT

The Ninth Circuit stated the law accurately, as the passages quoted from its opinion demonstrate:

> "'[T]he test to be applied in determining the status of a multi-employer unit is "whether the members of the group have indicated from the outset an unequivocal intention to be bound in collective bargaining by group rather than individual action, and whether the union representing their employees has been notified of the formation of the group and the delegation of bargaining authority to it, and has assented and entered upon negotiations with the group's representative." See Van Eerden Company, 154 NLRB 496,

499 (1965); The Kroger Company, 148 NLRB 569, 573 (1964).' " Western States Regional Council No. 3, Woodworkers v. N.L.R.B., 398 F.2d 770, 773 (C.A. D.C., 1968); Cf. N.L.R.B. v. Truck Drivers Local Union No. 449, etc. (Buffalo Linen) 353 U.S. 87 (1957).

" '[T]he validity of a multi-employer unit depends not only upon the intent of the employers, but the acceptance of the group unit by the union.' N.L.R.B. v. Bagel Bakers Council of Greater New York, 434 F.2d 884, 886-887 (C.A. 2, 1970), and cases cited. For, as the Court noted in Publisher's Association of New York City v. N.L.R.B., 364 F.2d 293, 294-5 (C.A. 2, 1966), cert. denied, 385 U.S. 971, 'a multi-employer unit is a purely consensual device;' therefore, '[m]utual consent * * * is a basic ingredient' although, 'the Board has not found inappropriate a unit where there was a consent as

evidenced by a history of a multi-employer bargaining.' (idem., pp. 294-5)

"The Court restated the controlling principles for withdrawal from multi-employer bargaining in Publisher's Association of New York City v. N.L.R.B., supra,364 F.2d at 295, as follows:

> 'The Board has held that an employer may freely withdraw, subject only to the requirement that, unless there is mutual consent, notice of withdrawal must be timely and unequivocal. [Retail Associates, Inc., 120 N.L.R.B. 388 (1958); Anderson Lithograph Co., 124 N.L.R.B. 920, 928-929 (1959), enforced sub nom.] N.L.R.B. v. Jeffries Banknote Co., 281 F.2d 893 (C.A. 9, 1960).'

"We quote with approval the [National Labor Relations Board's] brief:

> 'In United Fryer & Stillman, Inc., 139 NLRB 704, 708 (1962),

the union was a party to a multi-employer agreement with an association as well as party to a separate, individual agreement with the employer, United Fryer. United, during the term of these agreements, joined the association. Later when the union served timely notice of its desire to negotiate a new agreement, the association responded with a communication indicating that United had joined the association and that the association would bargain on behalf of United as part of the multi-employer unit. The union, however, declined to recognize United as part of the association and renewed its request for separate, independent bargaining on the pre-existing single-employer basis. The association insisted on a multi-employer bargaining. The Board sustained the Trial Examiner's finding that United had refused to bargain in good

faith in violation of Section 8(a)(5) of the Act, inasmuch as a single-employer unit is presumptively appropriate; previous bargaining was on a single-employer basis; the association's notice to the union of its desire to negotiate on a multi-employer basis was untimely because it was served after the union had served a timely request on the employer to bargain on a single-employer basis for renewal of their separate, independent agreement; and the union had refused to consent to the change in the bargaining relationship. And see, Moveable Partitions, Inc., 175 NLRB No. 149 (slip op. pp. 4-6), 71 LRRM 1095 (1969).' " 453 F.2d 215, 217-18.

However, these very quotations reveal the fact that the Court of Appeals for the Ninth Circuit in this instant case has introduced a new rule: that a union is not bound to continue participating in group

(multi-union, multi-employer) bargaining if there has been no "practice" of group bargaining. 453 F.2d 215, 218. (Quite clearly there has been consent, since Local 2020 was a signatory to the Conference Agreements since 1965. Furthermore, no evidence was introduced before the National Labor Relations Board to show that Local 2020 had or has ever withdrawn from the Conference or from the bargaining arrangements with SCACM, nor is any reference made to this absence of a showing to be found in the statement of facts by the Ninth Circuit.)

This newly announced rule by the Ninth Circuit conflicts with all the opinions of the Courts of Appeal cited in its own opinion (including some of its previous own opinions), and introduces a test which under some circumstances could never be met -- as, for example, at the beginning of a collective bargaining relationship where there can have been no history or "practice" of group bargaining. It is interesting to note in this connection that in the case which the Ninth Circuit quoted above, Western States Regional Council No. 3 v. N.L.R.B., 398 F.2d 770 (C.A. D.C.

1968), the Court there sustained a Board finding that the employers bargaining group was appropriate even though "the history in the lumber industry has been bargaining by single employers or informal, not fully bound groups. Although obviously past actions may be indicative of present intent, in view of other credible evidence in the record, and given the fact that the Board and the trial examiner are of one mind, we cannot say that the conclusion that the employers intended to be bound in 1963 is unfounded." 398 F.2d 774.

Conversely, if a union unequivocally and in a timely fashion withdraws its consent to engage in group bargaining, the National Labor Relations Board will support individual bargaining in the face of "a long history of multi-employer bargaining", Publishers' Association of New York City v. National Labor Relations Board, 364 F.2d 293, 294 (C.A. 2, 1966), and will support this in the face of a great deal of "practice."

Because actually it is "consent" which is the essence of the group bargaining arrangement and because "practice" is not relevant to the establishing of the group relationship

the Courts have not added any requirement of "practice" as a condition to the finding of multi-union, multi-employer bargaining units. At best, history or practice will tend to establish consent or its lack of consent. And in the present instance Local 2020 has a history and practice of being part of the Southern California Conference. Indeed, its lengthy adherence to the group estops it from denying its consent to the group collective bargaining arrangement. See, for example, Lewis v. Mearns, 168 F. Supp. 134 (D.C. N.D. W.Va., 1958), aff'd 268 F.2d 427 (C.A. 4, 1959); N.L.R.B. v. Sheridan Creations, Inc., 357 F.2d 245, 247 (C.A. 2, 1966).

By introducing this new test, the Court of Appeal for the Ninth Circuit (which cites no authority for it, by the way) has created and adopted a rule which is in conflict with the decisions of Courts of Appeal in the other circuits (including its own) which do not make any such requirement. In addition to the cases cited already see N.L.R.B. v. Jeffries Banknote Company, 281 F.2d 893 (C.A. 9, 1960); N.L.R.B. v. Local 210, 330 F.2d 46, 47 (C.A. 2, 1964); Universal

Insulation Corporation v. N.L.R.B., 361 F.2d 406 (C.A. 6, 1966); N.L.R.B. v. Johnson, 368 F.2d 549 (C.A. 9, 1966).

Indeed, even the National Labor Relations Board has not in some of its more recent pronouncements adopted the Court's rule. See, for example, Local No. 42 and Delaware Contractors Association, Inc. 193 N.L.R.B. No. 73 (1971); Sacramento Automotive Association and International Association of Machinists, 193 N.L.R.B. No. 117 (1971).

2. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING EFFORTS TO DESTROY GROUP COLLECTIVE BARGAINING ARRANGEMENTS WHICH ARE GENERALLY SUPPORTED BY THIS COURT

By allowing in this instance the local union (2020) to withdraw from the group bargaining arrangement in both an untimely and equivocal manner (see Publishers' Association of New York City v. N.L.R.B., 364 Fed. 293, 295 (C.A. 2, 1966), cert. denied 385 U.S. 971) the decision of the Ninth Circuit creates a problem resulting from

the introduction of a new element of instability in traditional arrangements for bargaining collectively in an orderly fashion by small employers who may be scattered over a wide geographic area. In this case, the record shows the employers are small, and the geography is far-flung (it embraces 12 Southern California Counties).

The record shows also that Local 2020 was a member of the 12 Southern California Counties Mill Conference of Unions, and had been since 1965. The Conference (including Local 2020) had had contracts with SCACM since 1965. Therefore, Local 2020 was an integral part of the collective bargaining structure in the kitchen and bathroom cabinet industry, and was not just an independent union trying to negotiate agreements with independent employers. Everybody involved in these proceedings belonged to the multi-union, multi-employer bargaining structure (SCACM and the Southern California Conference).

Nowhere in the record of this matter is there a shred of evidence that Local 2020 ever withdrew from the Conference of Unions, let alone from the multi-union,

multi-employer bargaining structure. On the contrary, by its execution of the 1968-71 Master Labor Agreement (and a similar prior agreement) it consented to an arrangement whereby "all employers who are or who become members of the Southern California Association ... are parties to this agreement and are entitled to the benefits and subject to the obligations thereof. ..." (Emphasis added.)

To permit unilateral and untimely and uncommunicated withdrawal in the present instance is to permit the erosion of many group collective bargaining arrangements which may have been carefully and painfully arrived at over several years at the instance of a disgruntled union or, for that matter, of a disgruntled employer.

The fracturing of the bargaining structure which will result from the decision of the Ninth Circuit will deny smaller employers

(1) of comparatively equal bargaining strength vis-a-vis the unions,

(2) of a better informed and more intelligent way of handling labor-management relations,

(3) of the assurance that all employers in the group are being treated with some degree of equality in their labor costs so that they can compete fairly with each other, and

(4) of a less costly way of obtaining competent labor relations counsel and assistance.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

EDDY S. FELDMAN

Attorney for Petitioners

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Supreme Court, U. S.
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MAY 13 1972
MICHAEL RODAK, JR., CLERK

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VOLUME II

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

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TXD-(SF)-46-70
San Diego, Calif.
April 6, 1970

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

GEORGE M. HART dba SAN DIEGO CABINETS	Case No. 21-CA-8828-1
D&G CABINETS, INC.	Case No. 21-CA-8828-2
ALLAN M. HOMES AND CHARLES A. HOMES, dba A.M. HOMES PRE-HUNG DOORS; and HOMES & SONS	Case No. 21-CA-8828-3
THOMPSON CABINETS, INC.	Case No. 21-CA-8828-4
CROSS CABINET & DOOR COMPANY	Case No. 21-CA-8828-5
RONALD H. SANDOVAL dba RONDELL CABINET MFG.	Case No. 21-CA-8828-6
HARRY B. PARKINSON dba PARKINSON CABINET SHOP	Case No. 21-CA-8828=7
KITCHEN CABINETS, INC.[1]	Case No. 21-CA-8861

---

[1] The Respondents hereafter shall be designated as follows: George M. Hart, dba San Diego Cabinets, as Hart; D&G
(continued)

and

CARPENTERS' LOCAL UNION NO. 2020
OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO[2]

Ben Grodsky, for the General Counsel.
Richard D. Prochazka of Brundage,
Williams & Zellman of San Diego,
Calif., for the Charging Party.
Richard Fenton of Los Angeles, Calif.
for Respondents Hart, D&G, Thompson,
Rondell, Parkinson & Kitchen Cabinets.

1/ (continued)

D&G Cabinets, Inc., as D&G; Thompson Cabinets, Inc., as Thompson; Cross Cabinets & Door Co., as Cross; Ronald H. Sandoval, dba Rondell Cabinet Mfg., as Rondell; Harry B. Parkinson, dba Parkinson Cabinet Shop, as Parkinson; Kitchen Cabinets, Inc., as KC. One of the issues in the proceedings is whether Allan M. Homes, dba A.M. Homes Pre-hung Doors and Charles A. Homes, dba Homes & Sons, should be treated as one employer, as contended by the General Counsel, or as separate entities, as contended by Mr. McGrath. For this reason, the former shall be designated as A.M. and the latter as C.A. Homes where the Examiner finds it necessary to distinguish them in this decision.

2/ Hereafter Local 2020.

Robert E. Andreen of Kaminar, Sorbo, Andreen & Thorn of San Diego, Calif., for Respondent Cross.
William L. McGrath of Kaminar, Sorbo, Andreen & Thorn of San Diego, Calif., for Respondent Homes.

TRIAL EXAMINER'S DECISION

Statement of the Case

GEORGE CHRISTENSEN, Trial Examiner: On December 16 and 17, 1969[3/] the Examiner conducted a hearing at San Diego, California to try issues raised by Complaints[4/] alleging that the Respondents have refused to bargain in good faith with Local 2020 since August 2 and have thereby violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (Act). Separate charges were filed by Local 2020 against KC on October 21 and against the balance of the Respondents on October 6.

3/ Add 1969 to any further date references where the year is omitted.

4/ All the cases were consolidated for purposes of hearing and decision on November 17 inasmuch as issues common to all were involved and to be litigated, and to save unnecessary cost and delay.

All Respondents filed Answers admitting proper service of the charges upon them, that each at all times pertinent was engaged in the San Diego area, that each annually purchases and receives goods, materials and supplies valued in excess of $50,000 from suppliers within the State of California who receive such goods, materials and supplies directly from points outside the State of California, that each at all times pertinent was an employer engaged in commerce and in a business affecting commerce within the meaning of the Act, and that a unit consisting of production and maintenance employees of each Respondent, including journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act, constitutes an appropriate unit as to each Respondent for the purpose of bargaining collectively with respect to the rates of pay, wages, hours and other conditions of employment of the employees of each Respondent within such unit.

All the Respondents contend that no

violation of the Act occurred because prior to the time each of their contracts with Local 2020 expired they joined an employer association which was party to a 1968-71 agreement with a conference of unions including Local 2020, thereby merging that Association and their separate bargaining units into a multi-employer bargaining unit encompassed by that agreement. Cross alleges an added and separate defense that at no time pertinent did it refuse to bargain with Local 2020 but on the contrary expressed its willingness to bargain at any mutually convenient date. C.A. Homes alleges an added and separate defense that at no time was it under any obligation to bargain with Local 2020.

The basic issue is whether by such association affiliation the Respondents were relieved of an obligation to bargain individually with Local 2020 concerning the rates of pay, wages, hours and other working conditions of their employees within the units heretofore specified. Added issues arise as to whether, assuming a duty on the part of Cross to bargain individually with Local 2020, it satisfied that duty and

whether C.A. Homes at any time had any duty to bargain with Local 2020.

The General Counsel, the Charging Party and all the Respondents appeared by counsel at the hearing and were afforded full opportunity to introduce evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. Counsel for the General Counsel, the Charging Party, Respondents Cross and Homes filed briefs.

Based upon his review of the entire record, observation of the witnesses, perusal of the briefs and research, the Examiner enters the following:

Findings of Fact[2/]

I. Jurisdiction

The essential facts (related above) necessary to establish the Board's jurisdiction over the Respondents in this case were alleged in the Complaints and admitted

---

5/ The findings in this case are based upon the stipulations of the parties and the uncontradicted testimony offered during the hearing; Respondents did not adduce any testimony.

in the Answers. The Examiner therefore finds and concludes that the Respondents were employers engaged in commerce and in a business affecting commerce within the meaning of the Act at all times pertinent to this proceeding.

II. Labor Organization

M. N. Long, Financial Secretary of Local 2020, testified without contradiction that Local 2020 exists primarily for the purpose of bargaining collectively on behalf of its members with their employers concerning their wages, hours and working conditions. It has petitioned the Board for certification as the exclusive representative of its members for that purpose, participated in Board elections, and has been so certified. It has negotiated and executed several collective bargaining agreements with employers of its members concerning their wages, hours and working conditions. The examiner therefore and concludes that Local 2020 was a labor organization within the meaning of the Act at all times pertinent.

III. The Unfair Labor Practices

A. Bargaining History

Historically Local 2020 and the employers of its members negotiate the rates of pay, wages, hours and other working conditions for the carpenters within Local 2020's geographic and trade jurisdiction by local bargaining. For some 10 years, at least, the area pattern has been established by negotiation of a collective bargaining agreement between Local 2020 and the San Diego Lumbermen's Association (S.D. Assn.), followed by separate, independent negotiations of agreements containing basically the same terms between Local 2020 and the employers of Local 2020's members who were not members of the Association, (the independents). These agreements, while separately and independently negotiated on a single employer basis, were tailored to specific segments of the industry within the area (the Mill & Cabinet; the Stock Mill; etc.).

The last round of negotiations preceding those which precipitated this dispute occurred in 1966. In accord with previous

practice, Local 2020 and the S.D. Assn. negotiated a 3-year contract expiring on July 31.

None of the Respondents were members of the S.D. Assn. at the time. Seven of the nine Respondents (Cross, D&G, Hart, A.M. Homes, KC, Parkinson and Thompson) and some 50 other employers in the San Diego area subsequently negotiated and executed separate and individual contracts for the same term with Local 2020. A.M. Homes and Local 2020 executed a "Stock Mill" Agreement and the other six executed "Mill & Cabinet" Agreements. Rondell was signatory to a Mill & Cabinet Agreement with Local 2020 for the term ending July 30, 1966 but did not execute a new contract for the 1966-69 term. Rondell did, however, comply with all the terms and conditions of the latter contract during its term. C.A. Homes and Local 2020 executed a Mill and Cabinet Agreement some time prior to 1969, but did not sign a 1966-69 contract. Local 2020's members worked for C.A. Homes and Rondell through the 1966-69 term of Local 2020's agreements with the other seven and thereafter, were serviced by Local 2020's representatives,

and were compensated in accordance with the terms of said agreements. Local 2020 members worked at the premises of C.A. Homes and were directly supervised in their work performance by C.A. Homes at all times since 1966. C.A. Homes' business at all times pertinent was conducted in a building immediately adjacent to that of A.M. Homes.

B. The 1969 Negotiations

Pursuant to the duration provision of the respective contracts, on May 29 Local 2020 served written notices upon the S.D. Assn. and each of the 50 or more independents, including Cross, D&G, Hart, A.M. Homes, C.A. Homes, KC, Parkinson, Rondell and Thompson. The notices to the independents (including each Respondent) read as follows:

> In accordance with the prosisions of the National Labor Relations Act, as amended, and the provisions of Section XIX of our current agreement, we hereby give the required sixty day notification of our desire to change, modify or terminate the afore-mentioned agreement.

In accordance with the above section, we stand ready to meet with you within the next thirty days to outline the changes we feel are necessary.

If we have no response to this notice, we will assume it is your intention to abide by the outcome of negotiations between our Union and the Lumbermen's Association.

Thank you for an early reply.

Only one of the Respondents requested a conference to discuss Local 2020's proposals for a new contract. Kent Cross, President of Cross, telephoned M.N. Long, Financial Secretary of Local 2020, the two met on June 19 at Cross' office and Long went over each of Local 2020's proposed changes from the 1966-69 contracts, explaining each one. It was recognized that the proposals would undergo modification as negotiations between the S.D. Assn. and Local 2020 progressed (they were scheduled to commence the next day). Cross commented that he thought the wage proposals were too high and asked Long to keep him informed concerning developments in the S.D. Assn.-Local 2020

bargaining. Long agreed and from time to time thereafter telephoned Cross and kept him informed.

Sometime that same month, while Long was engaged in casual conversation with A. M. Homes, President of A. M. Homes, he told Homes that Local 2020 was seeking a wage increase of over 75 cents per hour over the term of the new contract; at that, in Long's words, "Mr. Homes almost flipped in the air, almost fell over, and from that point our trouble started."

Negotiations between the S. D. Assn. and Local 2020 ran through June and into July.

In the course of the negotiations John Maxwell, owner of a cabinetmaking shop and one of the S. F. Assn.'s negotiators, informed Long he had heard that several of the independents had signed an out-of-the-area contract and complained that he and other cabinetmakers among the S. D. Assn.'s membership would be placed at a competitive disadvantage if this was so.

By late July the S. D. Assn. submitted a substantial offer to Local 2020. Local

2020 took the offer to its membership and it was accepted on July 30 (a Wednesday).

That same date Long addressed a letter to each of the independents, including the nine Respondents, reminding them of the July 31 expiration of their agreements, advising them that Local 2020 wished to negotiate a separate, individual contract with each of them as it had in the past, and requesting that they meet with Local 2020 at 9:30 a.m. on August 2 (a Saturday) at the Carpenters' hall or contact Local 2020 for the purpose of setting a mutually satisfactory time, date and place for such negotiations.

Still on the same day, Frank Daluiso, Executive Vice President of the Southern California Association of Cabinet Manufacturers at Los Angeles, California (S.C. Assn.) addressed a letter to Dean Southerland, Chairman of the 12 Southern California Counties Mill Conference (S.C. Conf.) with a copy to Long of Local 2020 and to Daniel Johnston, a professional negotiator who had led the S.C. Conf. team in the 1968 negotiation of an S.C. Assn.-S.C. Conf. contract

for a term expiring July 31, 1971, stating that the Respondents (except C.A. Homes) had joined the S.C. Assn. and therefore automatically were covered by the S.C. Assn.-S.C. Conf. 1968-71 contract.[6/]

[6/] While Local 2020 affiliated with the S.C. Conf. when the Conf. was formed and negotiated its first contract with the S.C. Assn. for a term of 3 years expiring in 1968, it was a matter of accommodation inasmuch as none of the employers whose employees were represented for purposes of collective bargaining by Local 2020 were included either in the negotiations or the coverage of that contract. Local 2020 had no role in the administration of the contract and was prevailed upon to join in the notice terminating it by the representation this was necessary for an effective termination. Local 2020 did not participate in any way in the negotiations of the successor contract in 1968 between the S.C. Assn. and the S.C. Conf. The costs for Johnston's services as contract negotiator were distributed on a pro-rata basis among the S.C. Conf. affiliates who had collective bargaining relations with employers covered thereby. No charge was levied upon or paid by Local 2020, inasmuch as it did not have collective bargaining relations with any employers affected thereby. Shortly after the 1968 S.C. Assn.-S.C. Conf. negotiations were completed and the contract executed, Local 2020 received an inquiry from Respondent Parkinson about it and informed Parkinson it did not affect him. When Local 2020 began to ready its proposals (continued)

The next day (Thursday, July 31), Cross replied to Local 2020's July 30 request to meet with it for the purpose of negotiating a separate individual contract supplanting the previous one with a telegram advising Local 2020 that Cross had joined the S.C. Assn. on the previous day,[7] that this automatically placed Cross under the coverage of the S.C. Assn.-S.C. Conf. 1968-71

6/ (continued) for its 1969 negotiations with the S.D. Assn. and the independents (including the Respondents), it decided to resolve any ambiguities with regard to the S.C. Conference's right to bargain collectively on behalf of its members. Its Executive Board passed a resolution to recommend that Local 2020 withdraw from the S.C. Conf. The recommendation was adopted by membership vote on March 27. On or about March 31, Local 2020 advised Johnston of its action and was assured by Johnston that their withdrawal did not present any problem, inasmuch as no employer with collective bargaining relations with Local 2020 was affected thereby and Local 2020 was free to negotiate with the employers with whom it had such relations as it had in the past.

7/ The other Respondents (with the exception of C.A. Homes) tendered applications for membership in the S.C. Assn. between July 26-30.

contract and therefore there was nothing to negotiate about. On or about the same date, Cross by its counsel telephoned counsel for Local 2020 and stated Cross' willingness to meet with Local 2020 at any time to discuss the situation. The telegram was received the same day and was Local 2020's first notification that any of the Respondents actually had joined the S.C. Assn. and were claiming coverage under that agreement.[8/] The Daluiso letter notifying Local 2020 the balance of the Respondents had joined the S.C. Assn. and were making a similar contention apparently was received on Friday, August 1.

Many of the independents telephoned Local 2020 between July 31 and Saturday, August 2, to state their inability to attend the August 2 meeting requested in

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8/ The Respondents relied upon Section 12(a) of the 1968-71 S.C. Assn.-S.C. Conf. agreement reading:

> All Employers who are or who become regular members of the Southern California Association of Cabinet Manufacturers are parties to this Agreement and are entitled to the benefits hereof. . .

Long's July 30 letter and to arrange for another date. None of the Respondents other than Cross contacted Local 2020 to arrange a conference with Local 2020 for a date other than August 2.

About 7 or 8 independents met with Local 2020 on August 2 at the time requested. None of the Respondents appeared. Local 2020 explained the terms of the S.D. Assn.-Local 2020 settlement and requested that each of the independents accept similar terms and execute new individual, separate contracts embodying such terms titled "Interim Independent Mill & Cabinet" Agreements.[9/] The independents in

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9/ The proposed Interim Agreement provided for wage scales in the amounts and effective on the same dates as those negotiated with the S.D. Assn.; provided for the same changes in retirement contributions and vacation benefits; the same duration provision; but further provided for waiver of the no-strike, no-lockout and grievance-arbitration provisions of the previous agreement during the term of the interim agreement and further bargaining until all amendments to the prior agreement had been worked out and a complete and total agreement negotiated, and executed.

attendance and Local 2020 executed such contracts. As the meeting was breaking up, Messrs. Homes and Cross appeared. Homes signed one of the interim agreements and presented it to Leslie Parker, Secretary-Treasurer of the San Diego District Council of Carpenters, along with a document executed by Homes as agent for the S.C. Assn. on behalf of its Respondent members wherein Homes stated that he was signing the accompanying interim agreement as an agent of the S.C. Assn. on behalf of its Respondent members under protest. Parker refused to accept the two documents on this basis and advised Homes that Local 2020 would accept Homes' execution of an interim agreement on behalf of the Respondents only with the clear understanding that he was binding each as a separate, independent entity. Homes refused to execute the agreement on that basis. To make clear Local 2020's non-acceptance of the agreement in the form tendered, Parker destroyed the agreement proffered by Cross as agent for the S.C. Assn.

Commencing the following Monday (August 4) Local 2020 implemented its "no-contract,

no work" policy by striking all independents who had not signed a separate, independent interim agreement. By August 10, each Respondent and Local 2020 had executed separate, independent interim agreements. Cross advised Local 2020 by letter that it was signing the agreement under protest to avoid further economic losses occasioned by the strike and without waiving its position that the S.C. Assn.-S.C. Conf. 1968-71 contract governed the wages, rates of pay and other working conditions of its employees represented by Local 2020 and its right to seek a judicial determination of its rights to that effect. The other Respondents take a similar position, and all Respondents consistently have maintained this stance since. There hasn't been any bargaining between the Respondents and Local 2020 since the Respondents' execution thereof and no complete contracts have been negotiated.

C. Analysis and Concluding Findings

It is undisputed that prior to late July of 1969, each of the Respondents had recognized and bargained with Local 2020

as the representative of separate and independent units[10/] of their employees and executed individual agreements governing their wages, hours and working conditions. As conceded by the Respondents, such units are presumptively appropriate. Silver Lake Nursing Home, 178 NLRB No. 71; Green Construction Co., 133 NLRB 152; Appliance Supply Co., 127 NLRB 319; Metropolitan Homebuilders Assn., 119 NLRB 1184; Arden Farms, et al., 117 NLRB 318; etc.

10/ As noted heretofore, Respondents conceded in their answers to the complaints that production and maintenance units consisting of journeymen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constituted separate units appropriate for collective bargaining purposes under Section 9 of the Act. They further stipulated that on various dates prior to their July 31, 1969 expiration, all but Rondell and C.A. Homes executed separate agreements recognizing Local 2020 as the exclusive representative of their employees within those units; that Rondell and C.A. Homes prior to July 31, 1966 executed similar agreements with Local 2020; and that since July 31, 1966 Local 2020 members employed at the premises of Rondell and C.A. Homes have been compensated and their working conditions governed by the terms of the 1966-69 agreements between the independents and (continued)

Local 2020 served timely, individual notices in 1969 upon each of the Respondents effectively terminating the agreements it had with seven of the Respondents and putting the other two Respondents on notice that it desired to negotiate agreements with them for a term commencing August 1, 1969 (the previous agreements expired July 31, 1969). No cross-notices were served on Local 2020 prior to the opening dates (June

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10/ (continued) Local 2020. It is undisputed that during the 1966-69 term of the various contracts between Local 2020 and the independents and thereafter, all nine Respondents recognized Local 2020 as the exclusive representative of their employees within the units heretofore described, discussed problems concerning the wages, hours and working conditions of the employees within such units with Local 2020, and otherwise accorded Local 2020 recognition as the exclusive representative of their employees within said units. The denial of Local 2020's exclusive representative status within the nine individual units contained in the Respondents' answers to the complaints were based upon their contentions that the separate unit entities were destroyed by their merger into the multi-employer unit encompassed by the S.C. Assn.-S.C. Conf. agreement, not on the basis Local 2020 did not at all times pertinent represent the employees within the units. Based on the foregoing, the Examiner finds and concludes that separate (continued)

1, 1969) of their respective agreements by any of the seven under contract, nor by the two who were not, of any desire to change the pre-existing nine separate units for bargaining purposes to a multi-employer unit.

The Board has accepted a multi-employer unit as appropriate for collective bargaining purposes when:

> "The inclusion of a particular employer in a multi-employer unit is based upon the mutual consent of the parties to such inclusion, as evidenced either by a bargaining history for such group of employers in a single unit, or by the express agreement of the parties to the inclusion of the individual

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10/ (continued) and independent production and maintenance employee units consisting of employees of each of the nine Respondents classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constitute units appropriate for collective bargaining purposes and that at all times pertinent Local 2020 has been and continues to be the exclusive representative of Respondents' employees within such units.

employers." Local Union 49, Sheet Metal Workers Assn., 122 NLRB 1192, 1194. (Emphasis added).

In this case, there is neither a history of multi-employer barbaining nor express agreement between the Respondents and Local 2020 for multi-employer bargaining; rather their past practice has been to bargain individually and separately and Local 2020 has unequivocally opposed bargaining on a multi-employer basis with the Respondents.

The question then arises as to whether, as here, an employer or a union, acting unilaterally may effectively change the character of the existing bargaining relationship.

The reports contain several cases where the Board and the courts have recognized the unilaterally exercised right of either an employer or a union to withdraw from a multi-employer bargaining unit and to establish or re-establish bargaining on a single employer basis and imposed a legal obligation upon both parties to bargain on such basis thereafter. (N.L.R.B. v. Sklar C.A. 6, 53 LRRM 2005, rev. 134 NLRB 1289; Detroit Newspaper Publishers Assn. et al v.

N.L.R.B., C.A. 6, 64 LRRM 2403 affg. 154 NLRB 1482; Publishers Assn. of New York City et al v. N.L.R.B., C.A. 2, 62 LRRM 2722, affg. 156 NLRB 210; etc.) Such right and obligation have been denied, however, when the attempted withdrawal was belated, without timely and adequate notice, equivocal or in bad faith, (N.L.R.B. v. Corbett Press, Inc., C.A. 2, 69 LRRM 2480 affg. 163 NLRB 154; N.L.R.B. v. Strong, C.A. 9, 65 LRRM 3012, affg. 152 NLRB 9; N.L.R.B. v. Tulsa Sheet Metal Works, Inc., C.A. 10, 63 LRRM 2217, affg. 149 NLRB 1487; N.L.R.B. v. Sheridan Creations, Inc., C.A. 2, 61 LRRM 2586, affg. 148 NLRB 1502 (Cert. den., 64 LRRM 2108); N.L.R.B. v. Jeffries Bank Note Co., C.A. 9, 46 LRRM 2919, affg. 124 NLRB 920; etc.)

The Board has been even more stringent in cases involving an attempt by one of the parties to unilaterally change the character of the bargaining relationship from a single-employer to a multi-employer unit basis, due to the presumption favoring preservation of single-employer units. For example, in United Fryer & Stillman, Inc., 139 NLRB 704, the union in question was party both

to a multi-employer agreement with an employer association covering a number of small meat packing plants in the Denver area as well as a separate, individual agreement with the Respondent. During the term of the two agreements, the Respondent joined the employer association and signed a power of attorney authorizing the association to represent it for collective bargaining purposes. The union was not notified of this action at that time. When the union subsequently served timely notice under its agreement with the Respondent signifying its desire to negotiate a new agreement, the association responded with a communication notifying the union that the Respondent had joined the association and that the association would bargain with the union on behalf of the Respondent as part of the multi-employer unit and agreement coverage. The union advised the association it did not recognize the Respondent as part of the association for collective bargaining purposes and renewed its request for separate, independent bargaining on the pre-existing single-employer basis, stating that it had no

objection to the association acting as the Respondents' agent in negotiations on such basis. The association maintained its position. The Board adopted the Trial Examiner's recommended decision finding that by so doing the Respondent failed to bargain in good faith and thereby violated Section 8(a)(5) and (1) of the Act, inasmuch as (1) a single-employer unit is presumptively appropriate, (2) previous bargaining was on a single-employer basis, (3) the association's notice to the union of a desire to negotiate on a multi-employer basis was untimely in that it was served on the union after the union had served a timely request upon the Respondent to bargain on a single-employer basis for a renewal of their existing separate, independent agreement, and (4) the union refused to consent to the change in the bargaining relationship desired by the Respondent. To a similar effect, Moveable Partitions, Inc., 175 NLRB No. 149; United Association etc., (Reynolds El. & Eng. Co.), 171 NLRB No. 176; U.S. Pillow Corp., 137 NLRB 584.

Applying the rationale of the cases

cited above, the Respondents' unilateral attempt to change the character of the collective bargaining relations between them and Local 2020 from sirgle-employer bargaining to multi-employer bargaining is invalid and consequently their insistence upon bargaining with Local 2020 through the S.C. Assn. as a part of the multi-employer group covered by the S.C. Assn.-S.C. Conf. agreement was and is violative of Section 8(a)(5) and (1) of the Act. It is undisputed that eight of the nine Respondents joined the S.C. Association (C.A. Homes did not join it at all) and authorized it to represent them for collective bargaining purposes after their receipt of Local 2020's requests addressed to each of them separately for single-employer bargaining, in accordance with previous practice, and after Cross (and A.M. Homes, with regard to wages) had discussed Local 2020's proposals for new agreements. It reasonably may be presumed that the balance of the Respondents were informed of Local 2020's proposals and the S.D. Association's July offer. The Respondents' motive for joining the S.C. Assn. and attempting to place themselves

under the coverage of the 1968-71 S.C. Assn.-S.C. Conf. agreement is readily apparent; the S.C. cabinetmaker rate is $4.145, effective July 1, 1969, $4.345, effective July 1, 1970, with a contract expiration date of June 30, 1971; the S.D. cabinetmaker rate is $4.43, effective August 1, 1969, $4.81, effective August 1, 1970, $5.18, effective August 1, 1971, with a contract expiration date of July 31, 1972. The Respondents would be required to pay increases of only 3-1/2 cents in 1969 (their cabinetmaker rate, effective August 1, 1968, was $4.11), and 20 cents in 1970 under the S.C. Assn. agreement, as contrasted with increases of 32 cents in 1969, 38 cents in 1970 and 37 cents in 1971 under the S.D. agreement (assuming Local 2020 was successful in securing their agreement to the S.D. Assn. rate adjustments). Obviously Respondents sought to avoid single-employer bargaining with Local 2020 over its proposal to accept the S.D. Assn.-Local 2020 $1.07 wage settlement for the 1969-72 term and instead obligate themselves only for 23-1/2 cents for the following 2 years with every prospect for an increase for the 3rd year

of far less than 83-1/2 cents (the difference between the total $1.07 3-year settlement of the S.D. Assn. and the 1969 and 1970 S.C. Assn. rate increases). It is further undisputed that the eight Respondents who joined the S.C. Assn. and empowered it to represent them did not notify Local 2020 of their action until after Local 2020 had served its requests for single-employer bargaining upon them and reached agreement with the S.D. Assn., and failed to secure Local 2020's consent to a change in their previous collective bargaining pattern.

With regard to the latter factor (consent), the Examiner rejects the Respondents' contention that paragraph 12(a) (see Fn. 8) constitutes Local 2020's consent to Respondents' inclusion within the S.C. Assn. multi-employer unit for collective bargaining inasmuch as knowing and express consent is required, and is absent here, Local 2020 did not participate in the negotiation of the 1968-71 S.C. Assn.-S.C. Conf. agreement, Local 2020 withdrew from the S.C. Conf. perior to the date the Respondents applied for membership in the S.C. Assn. (cf.

U.S. Pillow Corp., 137 NLRB 584 and United Association etc. (Reynolds El. & Eng. Co.), 171 NLRB No. 176).

Insofar as Cross' contention that it at no time refused to bargain inasmuch as it informed Local 2020 of its willingness to meet and discuss matters with Local 2020 at any time, it also by its President on August 2 and by its Vice President and Counsel on August 7 and continuously since those dates has consistently maintained that it is not required to bargain individually and independently on a single-employer basis with Local 2020 and that the wages, hours and working conditions of its employees in the appropriate unit hereinbefore specified are governed by the 1968-71 S.C. Assn.-S.C. Conf. agreement. A finding has been entered above that by its continued adherence to this position Cross has violated the Act; its professed willingness to discuss this unlawful position does not excuse the violation.

C.A. Homes contends that it has no duty to bargain with Local 2020 because it has not employed any members of Local 2020 at any time pertinent. It is not disputed

that C.A. Homes is a corporation operating a business in a building immediately adjacent to a building in which A.M. Homes, a separate corporation, conducts a separate business. At one time in the recent past, C.A. Homes was party to a "Mill & Cabinet" agreement with Local 2020 at the same time A.M. Homes was party to a "Stock Mill" agreement. Continuously since the expiration of the C.A. Homes-Local 2020 agreement, Local 2020 has continued to dispatch its members to the premises occupied by C.A. Homes for work under the supervision and direction of C.A. Homes. In recent times, the carpenters so employed have been paid by checks issued by A.M. Homes. On these facts, the Examiner finds and concludes that while paid by A.M. Homes, at times pertinent to this cause members of Local 2020 in job classifications within the appropriate unit hereinabove specified have been and continue to be employed by C.A. Homes at its place of business in work which it conducts under its supervision and control and therefore it had at times pertinent and continues to have a duty to bargain collectively with Local 2020

concerning the wages, hours and working conditions of such employees and, if it has reached and/or reaches an agreement with Local 2020 with regard thereto, to comply with or execute same.

Conclusions of Law

1. The Respondents were employers engaged in commerce in a business affecting commerce and Local 2020 was a labor organization within the meaning of Section 2(5) of the Act at all times pertinent to this proceeding.

2. Separate units at each Respondent's premises consisting of employees classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers, excluding all other employees, constitute units appropriate for collective bargaining purposes within the meaning of Section 9 of the Act.

3. Local 2020 has been the exclusive representative of Respondents' employees in the separate, appropriate units specified in No. 2 above for purposes of collective bargaining at the times pertinent to this proceeding.

4. By Cross' insistence since July 31, 1969 and all the Respondents' insistence since August 2, 1969 that the Respondents were included within a multi-employer unit covered by a 1968-71 agreement between the S.C. Assn. and the S.C. Conf. for collective bargaining purposes and therefore not obliged to bargain collectively with Local 2020 on an individual, spearate, single-employer basis with regard to the wages, hours and working conditions of their employees within the units specified in No. 2 above, the Respondents have failed and refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices occurring in connection with Respondents' operations heretofore described have a close, intimate and substantial relation to trade, traffic and commerce among the several states and, unless corrected, will tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof and therefore constitute unfair labor practices affecting commerce within the meaning of the Act.

The Remedy

Having found that the Respondents a engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, the Examiner shall recommend that they cease and desist therefrom and take affirmative actions designed to effectuate the Act.

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, the Examiner recommends that each of the nine Respondents, their officer, agents, successors and assigns, be ordered to:

1. Cease and desist from asserting that the wages, hours and working conditions of their employees classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers are governed by the 1968-71 agreement between the S.C. Assn. and S.C. Conf. or that the separate identity of units for collective bargaining purposes consisting of employees within such job classifications has been destroyed by

merger into a single multi-employer bargaining unit covered by that agreement;

2. Cease and desist from asserting that any individual, separate agreement or understanding reached between any of the Respondents and Local 2020 concerning the wages, hours and working conditions of employees within such units is unlawful, void or otherwise enforceable by virtue of any conflict between such agreement and the 1968-71 S.C. Assn.-S.C. Conf. agreement;

3. Meet and bargain with Local 2020 at its request over the wages, hours and working conditions of employees within the units hereinabove specified and, when and if full and final settlement of all issues is reached, reduce such agreements to writing and execute same.

4. Post on each Respondent's premises at places where notices to employees are customarily posted copies of the notice attached hereto and marked "Appendix." 11/

11/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order (continued)

Copies of such notices on forms furnished by the Regional Director for the 21st Region shall be signed by an authorized representative of each Respondent and posted immediately upon receipt thereof and maintained for a period of 60 days thereafter. Reasonable steps shall be taken to insure that the notices are not altered, defaced or covered by other material.

5. Notify the Regional Director for Region 21 in writing, within 20 days from the date of this Decision, what steps each

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11/ (continued) herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL RELATIONS BOARD."

Respondent has taken to comply herewith.[12/]

Dated: April 6, 1970.

/s/ George Christensen

George Christensen
Trial Examiner

[12/] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 21, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

183 NLRB No. 100

D-4120
San Diego, Calif.

June 24, 1970

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GEORGE W. HART dba SAN DIEGO CABINETS	Case 21-CA-8828-1
D & G CABINETS, INC.	Case 21-CA-8828-2
ALLAN M. HOMES AND CHARLES A. HOMES dba A.M. HOMES PRE-HUNG DOORS; AND HOMES & SONS	Case 21-CA-8828-3
THOMPSON CABINETS, INC.	Case 21-CA-8828-4
CROSS CABINET & DOOR COMPANY	Case 21-CA-8828-5
RONALD H. SANDOVAL dba RONDELL CABINET MFG.	Case 21-CA-8828-6
HARRY B. PARKINSON dba PARKINSON CABINET SHOP	Case 21-CA-8828-7
KITCHEN CABINETS, INC.	Case 21-CA-8861

and

CARPENTERS' LOCAL UNION NO. 2020 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

DECISION AND ORDER

On April 6, 1970, Trial Examiner George Christensen issued his Decision in the above-entitled proceeding, finding that

Respondents had engaged in and were engaging in the unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's decision, the exceptions and supporting brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the

National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that Respondents, George M. Hart dba San Diego Cabinets, D & G Cabinets, Inc., Allan M. Homes and Charles A. Homes dba A.M. Homes Pre-hung Doors; and Homes & Sons, Thompson Cabinets, Inc., Cross Cabinet & Door Company, Ronald H. Sandoval dba Rondell Cabinet Mfg., Harry B. Parkinson dba Parkinson Cabinet Shop, and Kitchen Cabinets, Inc., their officers, agents, successors, and assigns, each shall take the action set forth in the Trial Examiner's Recommended Order.

Dates, Washington, D.C. Jun 24 1970

John H. Fanning, Member

Frank W. McCulloch, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. GEORGE M. HART, dba SAN DIEGO CABINETS; ALLAN M. HOMES and CHARLES A. HOMES dba A.M. HOMES, PRE-HUNG DOORS, and HOMES and SONS: THOMPSON CABINETS, INC.; CROSS CABINET & DOOR COMPANY; RONALD H. SANDOVAL dba RONDELL CABINET MFG.; HARRY B. PARKINSON dba PARKINSON CABINET SHOP; and KITCHEN CABINETS, INC.: Respondents.	No. 71-1021 FILED NOV 24 1971 WM. B. LUCK, CLERK

On Application for Enforcement Of An Order Of The National Labor Relations Board

Before: BARNES and MERRILL, Circuit Judges, and THOMPSON, District Judge.*

PER CURIAM:

This is an application to enforce an order of the National Labor Relations Board,

*The Honorable Bruce R. Thompson, United States District Judge, District of Nevada, Reno, Nevada, sitting by designation, expressed tentative approval of an order to enforce the petition, but, due to illness, (continued)

which found respondent employers had violated Sec. 8(a)(5) and (1) of the Act by refusing to recognize and bargain with a Union on an individual, single-employer basis in the San Diego area.

Respondents are the individual employers of workmen (mainly carpenters), who have refused, as employers, to bargain with Carpenters Local Union No. 2020, United Brotherhood of Carpenters & Joiners of America, AFL-CIO -- herein "Local 2020" -- as "separate units at each respondent's premises." (Cf. 183 NLRB No. 100).

FACTS

Following their ten year practice, in 1966 Local 2020 and the San Diego Lumbermen's Association (herein "S.D. Association"), negotiated a labor contract, expiring July 31, 1969. The nine respondents herein were not members of the Employer's S.D. Association, but seven of the nine, with another 40 "independent employers" in the San Diego area, negotiated separate and individual contracts containing essentially the same

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* (continued) did not participate in, or join in, this opinion herein filed.

terms with the Local 2020 for the same period of time. Two respondent employers (Randell and C.A. Homes) did not sign contracts. However, they complied with the terms and conditions of the 1966-69 S.F. Association contract.

On May 29, 1969 the Union served the Lumbermen's S.D. Association and each of the independent employers, including all respondents, with a 60 day notice of "our desire to change, modify or terminate" the contract. The Union added: it stood ready, during June, 1969 negotiate with employers, and added:

> "If we have no response to this notice, we will assume it is your intention to abide by the outcome of negotiations between our Union and the Lumbermen's Association.
>
> Thank you for an early response."

The Lumbermen's S.D. Association and Local 2020 agreed on a settlement approved by Union vote on July 30, 1969. Later on that day, the Union notified all independents that it proposed to continue

bargaining on "an individual employer basis," and suggested an August 2d meeting.

Meanwhile, between July 26 and July 30, 1969, D & G (an individual employer not joined as a respondent), and the seven respondents, applied for membership in the "Southern California Association of Cabinet Manufacturers", (herein the "S.C. Association"), a multi-employer bargaining association that had signed a (1968-71 Master Labor Agreement" with the "Twelve Southern California Counties Mill Conference of Unions" (herein the "Conference").

> Section 12(a) of that agreement (between "Southern California Association" and "Conference"), provided:
>
> "All employers who are or who become members of the Southern California Association. . .are parties to this Agreement and are entitled to the benefits and subject to the obligations thereof. . ."

Notice of their membership in the "S.C. Association" was sent by it to the

"Conference" and a copy to "Local 2020".

One respondent (Cross), then wired Local 2020 that it was a member of the "S.C. Association", and that the "S.C. Association" was the sole bargaining agent for its members, hence Cross could not meet with Local 2020 to negotiate on August 2, 1969.

On August 2, 1969, some independents met with Local 2020, but no respondents. Those present signed an Interim Agreement with Local 2020. Before the meeting concluded C.A. Homes and Kent Cross appeared and Homes signed an interim agreement with Local 2020 for himself, and offered, as agent for the Association, to sign "under protest" an interim agreement as an agent for the Association, and on behalf of all other respondents. Local 2020 refused to accept any contract or permit any execution unless such act bound every respondent as a separate, independent employer. This was not agreeable to Homes, who refused to so sign.

On August 4, 1969, Local 2020 struck all independents who had not signed a separate Interim Agreement. Each respondent then signed an Interim Agreement under

protest.

The Board, on the above facts, found that the respondents had not been relieved of their obligations to bargain with Local 2020 by their affiliation with the "S.C. Association", and ordered them to meet and bargain upon request re the Union.

The Law

"[T]he test to be applied in determining the status of a multi-employer unit is 'whether the members of the group have indicated from the outset an unequivocal intention to be found in collective bargaining by group rather than individual action, and whether the union representing their employees has been notified of the formation of the group and the delegation of bargaining authority to it, and has assented and entered upon negotiations with the group's representative.' See Van Eerden Company, 154 NLRB 496, 499 (1965); The Kroger Company, 148 NLRB 569, 573 (1964)." Western States

Regional Council No. 3, Woodworkers v. N.L.R.B., 398 F.2d 770, 773 (C.A. D.C., 1968); Cf. N.L.R.B. v. Truck Drivers Local Union No. 449, etc. (Buffalo Linen) 353 U.S. 87 (1957).

"[T]he validity of a multi-employer unit depends not only upon the intent of the employers, but the acceptance of the group unit by the union." N.L.R.B. v. Bagel Bakers Council of Greater New York, 434 F.2d 884, 886-887 (C.A. 2, 1970), and cases cited. For, as the Court noted in Publisher's Association of New York City v. N.L.R.B., 364 F.2d 293, 294-5 (C.A. 2, 1966), cert. denied, 385 U.S. 971, "a multi-employer unit is a purely consensual device"; therefore, "[m]utual consent * * * is a basic ingredient" although, "the Board has not found inappropriate a unit where there was a consent as evidenced by a history of a multi-employer bargaining." (idem, pp. 294-5)

The Court restated the controlling principles for withdrawal from multi-employer bargaining in Publisher's Association of New York City v. N.L.R.B., supra, 364 F.2d at 295 as follows:

> "The Board has held that an employer may freely withdraw, subject only to the requirement that, unless there is mutual consent, notice of withdrawal must be timely and unequivocal. [Retail Associates, Inc., 120 N.L.R.B. 388 (1958); Anderson Lithograph Co., 124 N.L.R.B. 920, 928-929 (1959), enforced sub nom.] N.L.R.B. v. Jeffries Banknote Co., 281 F.2d 893 (C.A. 9, 1960)."

We quote with approval the petitioner's brief:

> "In United Fryer & Stillman, Inc., 139 NLRB 704, 708 (1962), the union was a party to a multi-employer agreement with an association as well as party to a separate, individual agreement with the employer, United Fryer. United, during the term of these agreements, joined the association. Later when

the union served timely notice of its desire to negotiate a new agreement, the association responded with a communication indicating that United had joined the association and that the association would bargain on behalf of United as part of the multi-employer unit. The union, however, declined to recognize United as part of the association and renewed its request for separate, independent bargaining on the pre-existing single-employer basis. The association insisted on a multi-employer bargaining. The Board sustained the Trial Examiner's finding that United had refused to bargain in good faith in violation of Section 8(a)(5) of the Act, inasmuch as a single-employer unit is presumptively appropriate; previous bargaining was on a single-employer basis; the association's notice to the union of its desire to negotiate on a multi-employer basis was untimely

because it was served after the union had served a timely request on the employer to bargain on a single-employer basis for renewal of their separate, independent agreement; and the union had refused to consent to the change in the bargaining relationship. And see, Moveable Partitions, Inc., 175 NLRB No. 149 (slip op. pp. 4-6,) 71 LRRM 1095 (1969)."

The Board suggests the above cases are controlling here. We agree. We are advised of no facts which make the Board's finding that Local 2020 had neither practised nor consented to multi-employer bargaining alone, clearly erroneous.

The additional contentions of individual respondents Cross and C.A. Homes are likewise without merit, in view of the findings of fact made by the Board.

The petition to enforce is granted.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. GEORGE M. HART dba SAN DIEGO CABINETS, ALLAN M. HOMES and CHARLES A. HOMES dba A.M. HOMES PRE-HUNG DOORS; and HOMES & SONS, THOMPSON CABINETS, INC., CROSS CABINET & DOOR COMPANY, RONALD H. SANDOVAL dba RONDELL PARKINSON CABINET SHOP, and KITCHEN CABINETS, INC., Respondents.	)	No. 71-1021

J U D G M E N T

Before: Barnes and Merrill, Circuit Judges, and Thompson, District Judge.*

THIS CAUSE came on to be heard upon the application of the National Labor Relations Board to enforce its order issued June 24, 1970, against the above-named Respondents,

* The Honorable Bruce R. Thompson, United States District Judge, District of Nevada, Reno, Nevada, sitting by designation, expressed tentative approval of an order to enforce the petition, but, due to illness, did not participate in, or join in, this opinion herein filed.

their officers, agents, successors, and assigns. On November 24, 1971, the Court, having considered the briefs and transcript of record filed in this cause, and being fully advised in the premises, handed down its decision granting enforcement of the Board's order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Ninth Circuit that Respondents George M. Hart dba San Diego Cabinets, Allan M. Homes and Charles A. Homes dba A.M. Homes Pre-Hung Doors; and Homes & Sons, Thompson Cabinets, Inc., Cross Cabinet & Door Company, Ronald H. Dandoval dba Rondell Parkinson Cabinet Shop, and Kitchen Cabinets, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from asserting that the wages, hours and working conditions of their employees classified as journeymen millmen and cabinet makers, journeymen finishers, spray gun operators and mill and shop helpers are governed by the 1968-71 agreement between the S.C. Assn. and S.C. Conf. or that the separate identity of

units for collective bargaining purposes consisting of employees within such job classifications has been destroyed by merger into a single multi-employer bargaining unit covered by that agreement;

2. Cease and desist from asserting that any individual, separate agreement or understanding reached between any of the Respondents and Local 2020 of The United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereinafter referred to as Local 2020) concerning the wages, hours and working conditions of employees within such units is unlawful, void or otherwise enforceable by virtue of any conflict between such agreement and the 1968-71 S.C. Assn.-S.C. Conf. agreement;

3. Meet and bargain with Local 2020 at its request over the wages, hours and working conditions of employees within the units as specified in the Trial Examiner's Decision of April 6, 1970, and, when and if full and final settlement of all issues is reached, reduce such agreements to writing and execute same.

4. Post on each of Respondents'

premises at places where notices to employees are customarily posted copies of the notice attached hereto and marked "Appendix." Copies of such notices on forms furnished by the Regional Director for the 21st Region, Los Angeles, California, shall be signed by an authorized representative of each Respondent and posted immediately upon receipt thereof and maintained for a period of 60 days thereafter. Reasonalbe steps shall be taken to insure that the notices are not altered defaced or covered by other material.

5. Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps it has taken to comply herewith.

ENDORSED, Judgment Filed and Entered Feb. 14 1972

SO ORDERED

/s/ Stanley N. Barnes

/s/ Charles C. Merrill
Circuit Judges

/s/ Bruce R. Thompson
District Judge

/s/ William B. Luck
William B. Luck
Clerk

A TRUE COPY

With Costs in this Court in favor of the Board and against the respondents.

Costs: One-half claimed cost of the brief of the Board. $81.49

ATTEST: MAR 16 1972

William B. Luck
Clerk/

by:

/s/ R.D. Hewitt
Deputy

FILED FEB 14 1972
WM. B. LUCK, CLERK

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE
UNITED STATES COURT OF APPEALS
ENFORCING AN ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT assert that the wages, hours and working conditions of our employees represented by CARPENTERS UNION LOCAL 2020 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO are those contained in a contract between the Southern California Association of Cabinet Manufacturers and the 12 Southern California Counties Mill Conference for a term extending from 1968 to 1971 or that collective bargaining for our employees represented by Local 2020 shall be conducted on a multi-employer, multi-union basis between representatives of that Association and Conference.

WE WILL NOT assert that the terms and conditions of any agreements or understandings we reach with Local 2020 covering the wages, hours and working conditions of our employees represented by Local 2020 are unlawful, void or otherwise unenforceable

by virtue of any conflict between such agreements and understanding and the terms of the 1968-71 agreement between the Association and Conference.

WE WILL meet and bargain with Local 2020 at its request over the wages, hours and working conditions of our employees represented by it and, when and if we reach full and final settlement of all disputes over the terms and conditions of such employees' wages, hours and working conditions, we will reduce such settlement to writing and sign it.

KITCHEN CABINETS, INC.
(Employer)

Date_____ By_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 849 South

Broadway, Eastern Columbia Bldg., Los Angeles, Calif., 90014, Telephone No. 688-5200.

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understandings and the terms of the 1968-71 agreement between the Association and Conferences.

WE WILL meet the bargain with Local 2020 at its request over the wages, hours and working conditions of our employees represented by it and, when and if we reach full and final settlement of all disputes over the terms and conditions of such employees' wages, hours and working conditions, we will reduce such settlement to writing and sign it.

ALLAN M. HOMES dba
A. M. HOMES PRE-HUNG DOORS
(Employer)

Date_____ By_____
(Representative) (Title)

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HARRY B. PARKINSON dba
PARKINSON CABINET SHOP
(Employer)

Date_____ By_____
(Representative) (Title)

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CHARLES A. HOMES dba
HOMES & SONS
(Employer)

Date_____ By_____
(Representative) (Title)

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RONALD H. SANDOVAL dba
RONDELL CABINET MFG.
(Employer)

Date_____ By_____
(Representative) (Title)

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GEORGE M. HART dba
SAN DIEGO CABINETS
(Employer)

Date_____ By_____
(Representative) (Title)

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THOMPSON CABINETS, INC.
(Employer)

Date_____ By_____
(Representative) (Title)

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CROSS CABINET & DOOR COMPANY
(Employer)

Date_____ By_____
(Representative) (Title)

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D&G CABINETS, INC.
(Employer)

Date_____ By_____
(Representative) (Title)

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UNITED STATES COURT OF APPEALS

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NATIONAL LABOR RELATIONS BOARD, Petitioner, v. GEORGE M. HART dba SAN DIEGO CABINETS, ALLEN M. HOMES and CHARLES A. HOMES dba A.M. HOMES PRE-HUNG DOORS; and HOMES & SONS, THOMPSON CABINETS, INC., CROSS CABINET & DOOR COMPANY, RONALD H. SANDOVAL dba RONDELL PARKINSON CABINET SHOP, and KITCHEN CABINETS, INC., Respondents.	)	No. 71-1021

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Board's proposed judgment in the above-captioned case has this day been served by air-mail upon the following counsel at the addresses listed below:

Richard Fenton, Esq.
2975 Wilshire Boulevard
Los Angeles, Califonria 90005

Kaminar, Sorbo, Andreen & Thorn
Att: L. William McGrath &
Robert E. Andreen, Esqs.
U.S. National Bank Building
1010 Second Avenue
San Diego, California 92120

/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

December 2, 1971

FILED JAN 7 1972
WM. B. LUCK, CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, vs. GEORGE M. HART, et al., Respondents.	No. 71-1021

Before: BARNES and MERRILL, Circuit Judges and THOMPSON, District Judge.*

O R D E R

The petition for rehearing in the above-entitled cause is DENIED.

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* Honorable Bruce R. Thompson, United States District Judge, District of Nevada, Reno, Nevada, sitting by designation.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1486

GEORGE M. HART, d/b/a SAN DIEGO CABINETS, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C) is reported at 453 F. 2d 215. The Board's decision and order (Pet. App. A and B) are reported at 183 NLRB No. 100.

JURISDICTION

The judgment of the court of appeals was entered on February 14, 1972 (Pet. App. D, D-1 to D-5).

The petition for a writ of certiorari was filed on May 13, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on the facts of this case, the Board properly found that the union had not consented to bargain with certain employers in a multi-employer, multi-union bargaining unit, and thus that those employers, by refusing to bargain with the union on an individual basis, violated Section 8(a)(5) and (1) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of Sections 8(a) and 9(a) of the National Labor Relations Act, 29 U.S.C. 158 (a) and 159(a) are as follows:

> Sec. 8(a). It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights [to bargain collectively, etc.]; * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees * * *.
>
> * * * *
>
> Sec. 9(a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclu-

> sive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

STATEMENT

Petitioners are engaged in the manufacture and installation of kitchen and bathroom cabinets in Southern California and they employ members of Local 2020, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("Local 2020"). The pattern of bargaining in the San Diego area has long been for Local 2020 to negotiate an agreement with the San Diego Lumbermen's Association ("Lumbermen's Association"), a multi-employer association with which petitioners are not affiliated, and, thereafter, to engage in separate negotiations with each of some fifty independent employers, including petitioners. Local 2020's agreements with the independent employers normally have contained terms similar to those in the Lumbermen's Association contract (Pet. App. A, A-8; Tr. 10-16, 31-34).[1]

In 1966, Local 2020 and Lumbermen's Association negotiated a three-year contract which expired on

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[1] "Tr." references are to the transcript of proceedings before the Board. "G.C. Exh.," "Resp. Exh.," and "C.P. Exh." are to the exhibits introduced in that proceeding by the General Counsel, the Respondents, and the Charging Party, respectively.

July 31, 1969 (Pet. App. A, A-8 to A-9; Resp. Exh. 7; Tr. 58-60). Petitioners and other independent employers subsequently negotiated and executed separate and individual contracts with Local 2020 covering the same period and having similar terms (Pet. App. A, A-9 to A-10; G.C.Exh. 2 & 3; Tr. 10-15).[2] On May 29, 1969, pursuant to the various contracts, Local 2020 served written notices upon Lumbermen's Association and each of the independent employers, including petitioners, stating that Local 2020 desired to reopen the contracts.

Negotiations between Lumbermen's Association and Local 2020 were held from June 20 through July 30, 1969, when the union's membership, including petitioners' employees, voted to accept Lumbermen's Association's "final offer" (Pet. App. A, A-12 to A-13; Tr. 21-22, 28-29). The financial secretary of Local 2020 then wrote each of the independent employers, including petitioners, informing them that their individual contracts expired on July 31 and that Local 2020 desired a meeting on August 2 to negotiate new individual agreements (Pet. App. A, A-13; Tr. 19-20; G.C. Exh. 6).

In late July 1969, petitioners applied for membership in the Southern California Association of Cabinet Manufacturers ("Southern California Association"), a multi-employer bargaining association (Pet.

[2] Two of the petitioners, Ronald H. Sandoval and C.A. Homes, did not sign contracts for the 1966-1969 term, but they did comply with the terms and conditions of the contracts signed by the other petitioners.

App. A, A-15, n. 7; Resp. Exhs. 11(a) to 11(i)). Southern California Association was signatory to a Master Labor Agreement with the Twelve Southern California Counties Mill Conference ("the Conference"), a multi-union bargaining group of which Local 2020 was a member prior to March 31, 1969 (Pet. App. A, A-13 to A-15; Resp. Exh. 4).[3] The agreement between Southern California Association and the Conference provided that "[a]ll Employers who are or who become members of the Southern California Association * * * are parties to this Agreement and are entitled to the benefits and subject to the obligations hereof * * *" (Pet. App. A, A-16, n. 8; Resp. Exh. 4, p. 3).

On July 30, 1969, the Executive Vice President of Southern California Association sent letters to the Chairman of the Conference and to Local 2020, stating that the petitioners had become members of the Southern California Association and were covered by the Master Labor Agreement (Pet. App. A, A-13 to A-14; Resp. Exh. 3). The following day, petitioner Cross sent a telegram to Local 2020 stating that, since petitioners were now members of the Southern California Association, they would not meet with

[3] When Local 2020 began to prepare its proposals for the 1969 negotiations with Lumbermen's Association and the independent employers, it decided to withdraw from the Conference, which it did during March 1969. At that time, no employer having bargaining relations with Local 2020 was a member of Southern California Association (Pet. App. A, A-14 to A-15, n. 6; Tr. 87-88, 93, 104-105, 109-112, 115-118, 126; C.P. Exhs. 1, 2; Resp. Exh. 10).

Local 2020 on August 2, and that the provisions of the Master Labor Agreement would become effective between them and Local 2020 as of August 1 (Pet. App. A, A-15 to A-16; Resp. Exh. 5(a) and (b)).

On August 2, the independent employers who did meet with Local 2020 signed "Interim Independent Mill & Cabinet Agreements" patterned after the contract between the union and Lumbermen's Association (Pet. App. A, A-17; Tr. 22; G. C. Exh. 7). As the meeting was closing, petitioner Charles A. Homes appeared as agent for petitioners; he signed an Interim Agreement on their behalf and presented it to the union representative, along with another document stating that petitioners had signed the Interim Agreement "under protest" (Pet. App. A, A-18; Tr. 25, 62-64; G. C. Exh. 8). The union representative advised Homes that Local 2020 would accept his execution of an Interim Agreement on behalf of petitioners only with the understanding that he was binding each as a separate, independent employer; Homes refused to sign on that basis (Pet. App. A, A-18; Tr. 70). Thereafter, following a strike against petitioners by Local 2020, each petitioner individually signed an Interim Agreement "under protest" but has refused to negotiate a complete contract (Pet. App. A, A-18 to A-19; Tr. 79, 133-134; Resp. Exh. 6; C.P. Exh. 3). Local 2020 subsequently filed unfair labor practice charges against petitioners.

The Board found that "there is neither a history of multi-employer bargaining nor express agreement between the [petitioners] and Local 2020 for multi-

employer bargaining" (Pet. App. A, A-23); that petitioners' attempts to establish a multi-employer bargaining unit were untimely since they came after the contract renewal notices had been sent out by Local 2020 (Pet. App. A, A-27); and that, therefore, petitioners violated Section 8(a)(5) and (1) of the Act by refusing to bargain on an individual basis with Local 2020 (Pet. App. A, A-33). The Board ordered petitioners to cease and desist from the unfair labor practices found and to bargain collectively with Local 2020 upon request (Pet. App. A, A-34 to A-35; Pet. App. B, B-3). The court of appeals enforced the Board's order (Pet. App. C, D).

ARGUMENT

1. Petitioner's basic contention (Pet. 10-18) is that the court of appeals erred in looking only to the prior practice of the parties and not to whether Local 2020 had, by virtue of its membership in the Conference at the time the Master Labor Agreement was executed, consented to bargain with petitioners in the Southern California Association unit. However, the court expressly upheld "the Board's finding that Local 2020 had neither *practised* nor *consented* to multi-employer bargaining alone" (Pet. App. C, C-10) (emphasis in the original). Thus, contrary to petitioners' contention, the court was not holding "that a union is not bound to continue participating in group * * * bargaining if there has been no 'practice' of group bargaining" (Pet. 14-15). The court applied the same test employed by

other courts of appeals, *i.e.*, whether both the union and the employers have indicated "an unequivocal intention to be bound in collective bargaining by group rather than individual action" (Pet. App. C, C-6). See *e.g.*, *Western States Regional Council No. 3, Woodworkers* v. *National Labor Relations Board*, 398 F. 2d 770 (C.A. D.C.); *National Labor Relations Board* v. *Bagel Bakers Council of Greater New York*, 434 F. 2d 884 (C.A. 2), certiorari denied, 402 U.S. 908. In so doing, it investigated not only "practice"—the history of the dealings between the parties—but also "consent"—the intent of the parties.

2. Accordingly, the only question here presented is whether substantial evidence supports the Board's finding that Local 2020 never consented to bargain with petitioners on a multi-employer basis. This factual issue does not warrant further review.

In any event, the Board's finding is amply supported. Local 2020 had always bargained with petitioners on an individual basis and had consistently opposed bargaining with them in a multi-employer unit. Furthermore, the terms of the Master Labor Agreement did not constitute express consent by Local 2020 to bargaining with a multi-employer unit embracing petitioners: neither Local 2020 nor any of the petitioners had engaged in the bargaining that led to the agreement, none of the employers Local 2020 bargained with were members of Southern California Association, and Local 2020 had completely severed its affiliation with the Conference four

months before petitioners joined Southern California Association. Moreover, even if the union's participation in the Conference had implied consent to bargaining with petitioners in a muti-employer unit, petitioners' unilateral efforts to create such a unit were untimely, for they occurred after the "pattern" contract with Lumbermen's Association had been negotiated. See *Detroit Newspaper Publishers Ass'n* v. *National Labor Relations Board*, 372 F. 2d 569 (C.A. 6); *Publishers' Ass'n of New York City* v. *National Labor Relations Board*, 364 F. 2d 293 (C.A. 2), certiorari denied, 385 U.S. 971.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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